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Supreme Court of the United States

October Term, 1978

No. 78-437

JOSEPH A. CALIFANO, JR., Secretary of
Health, Education and Welfare,
Appellant,

vs.

CINDY WESTCOTT, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF AMICI CURIAE
CATHY STEVENS, ROSALIE McROBERTS
AND SONJA SMITH**

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INTEREST OF AMICI CURIAE*

This brief is filed on behalf of Cathy Stevens, Rosalie McRoberts and Sonja Smith, three female residents of Ohio who have supported their respective families throughout their employment careers. When circumstances beyond their control led to their unemployment, they exhausted all resources available to them and thereafter made application for assistance pursuant to the Aid to Families

*Consent to the filing of a brief *amicus curiae* has been obtained from all parties and has been lodged with the Clerk's office.

with Dependent Children-Unemployed Fathers Program (AFDC-U). In both the Stevens and McRoberts cases, the families were seeking medical as well as monetary assistance. This was of special concern to the Stevens family because their daughter was suffering from impetigo and each of the adults faced a potentially serious problem with stomach ulcers. In all three cases the application for assistance under § 407 of the Social Security Act, 42 U.S.C. § 607 (hereafter § 407), was denied by the Ohio Department of Public Welfare because the family breadwinner was the female rather than the male parent. Solely because Cathy Stevens, Rosalie McRoberts and Sonja Smith were the breadwinners in their respective families, all family members were totally excluded from participation in the AFDC-U program. All three joined in a class action challenging the constitutionality of § 407 and the implementing state and federal regulations. In *Stevens v. Califano*, 448 F. Supp. 1313 (N.D. Ohio 1978), their challenge to the statute was upheld. While the State of Ohio elected to alter its program in accordance with the decision of the district court, Secretary Califano appealed that decision directly to this Court. *Califano v. Stevens*, No. 78-449, appeal docketed September 15, 1978. Probable jurisdiction has not as yet been noted.

Since a decision by this Court in *Califano v. Westcott*, No. 78-437, will affect the scope of § 407 and thereby the rights of Cathy Stevens, Rosalie McRoberts, Sonja Smith, and the class they represent, this brief *amici curiae* is submitted. *Amici* urge this Court to affirm the decision rendered by the United States District Court for Massachusetts in *Califano v. Westcott*, No. 78-437.

Amici also believe that the arguments of appellant concerning the appropriate test to be applied when scrutinizing sex-based classifications seriously threaten to under-

mine the prior rulings of this Court concerning the rights of women. *Amici*, therefore, submit this brief in support of this Court's prior rulings in cases involving sex-based classifications.

ARGUMENT

I. Introduction

The facts make clear beyond cavil the operation of the AFDC-U program. Section 407 denies federal financial assistance to families with children who are deprived of parental support or care solely because of a mother's unemployment, while at the same time providing AFDC-U payments to families with children who are deprived of parental support or care solely because of a father's unemployment. The regulations implementing § 407, promulgated by the Secretary of Health, Education and Welfare, do not permit AFDC-U payments to be made to families with needy children who are deprived of parental support or care solely because of the mother's unemployment. However, they do permit AFDC-U payments to be made to families with needy children who are deprived of parental support or care solely because of the father's unemployment.

The unalterable effect of the federal scheme is that a male breadwinner, who meets the requirements, qualifies his family for AFDC-U benefits, but an equally deserving female breadwinner, complying with the same requirements, can never qualify her family for such benefits. *Amici* will demonstrate that there is no important governmental objective served by this sex-based classification and that it is the result of sexually stereotyped thinking on the part of Congress.

II. The Legislative History of the Sex-Based Discrimination in § 407 Demonstrates That It Serves No Important Governmental Objective and That It Is the Result of Sexually Stereotyped Thinking on the Part of Congress

The objective of § 407 was to provide assistance to needy families with dependent children whose deprivation was caused by the unemployment of a parent. See *Batterton v. Francis*, 432 U.S. 416, 421 (1977). Congress did not intend through the adoption of § 407 to deal with the flight of fathers from impoverished, but intact households. This Court, as well as three United States Districts Courts, are in agreement on this point.¹ Even Alexander Sharp, Commissioner of the Massachusetts Department of Public Welfare, and appellant in *Sharp v. Westcott*, No. 78-689, recognizes this (Sharp Br. 14-26). Nevertheless, appellant doggedly asserts before this Court that § 407 was enacted to reduce the incentive for unemployed fathers to desert their families (Br. 11-24). Appellant's insistence on this point is understandable as his entire defense of § 407 is premised upon the dubious interpretation he suggests. An analysis of the statutory history of § 407 demonstrates the error in appellant's position.

The Aid to Families with Dependent Children Program (AFDC) was established by the Social Security Act of

1. In *Philbrook v. Glodgett*, 421 U.S. 707, 710-711, n.6 (1975), Justice Rehnquist, writing for a unanimous Court, stated that the motivation for § 407's provision of benefits exclusively to fathers was Congress' "displeasure with the state practice which had made 'families in which the father is working but the mother is unemployed eligible' for Aid to Families with Dependent Children (AFDC) benefits. See also *Stevens v. Califano*, 448 F. Supp. 1313 (N.D. Ohio 1978), appeal docketed sub nom., *Califano v. Stevens*, No. 78-449; *Westcott v. Califano*, No. 77-222-F (D. Mass., April 20, 1978), prob. juris. noted sub nom., *Califano v. Westcott*, No. 78-437; *Browne v. Califano*, No. 77-1249 (E.D. Pa., June 9, 1978), appeal docketed sub nom., *Califano v. Browne*, No. 78-603.

1935, 42 U.S.C. §§ 301 *et seq.* It was designed to assist "one clearly distinguishable group of children"; those who had been deprived of the support of a parent due to death, continued absence or physical or mental incapacity of that parent. H. R. REP. NO. 615, 74 Cong. 1st Sess. 10 (1935); 42 U.S.C. § 606(a); see *King v. Smith*, 392 U.S. 309, 328-329 (1968). The loss of a parent of either sex in one of the enumerated ways entitled (and still entitles) the deprived child to claim AFDC assistance.²

In 1961 Congress extended the coverage of the AFDC program to include children in intact families who were deprived of support because of the unemployment "of a parent". Act of May 8, 1961, 75 Stat. 75. As had previously been the case in the AFDC scheme, Congress established a sex-neutral prerequisite (unemployment "of a parent") for AFDC-U eligibility. Despite the utilization of sex-neutral terminology, appellant argues that the 1961 legislation was intended by Congress as a means of dealing with *paternal* desertion of welfare families. This argument does violence to both the language of the statute and its history.

The AFDC-U program, as originally enacted, was woven into the pattern previously established to assist children deprived of parental support. Like its precursors, AFDC-U was sex-neutral. From all appearances, the objective of the program was to provide assistance to children who had suffered a deprivation due to the unemployment of a parent, not to lure fathers into remaining in welfare homes. If the objective of this legislation was to deal

2. It should be noted that this sex-neutral result was accomplished despite the articulated inclination of Congress to render assistance to families deprived of a "breadwinner", "wage earner" or "father". See *King v. Smith*, 392 U.S. at 328 and n.25, 26, 27 and 28 (accompanying text).

specifically with paternal desertion rather than parental deprivation, the use of a sex-neutral classification was a most curious solution. To explain this anomaly one must hypothesize either an oversight in drafting³ or a congressional understanding of the term "parent" as the equivalent of the word "father".⁴ In either case, the language of the text would be ignored in favor of a conflicting interpretation. Such a reinterpretation is not justified unless the legislative history provides unambiguous support for it.⁵

The legislative history does not support appellant's theory. Rather, it demonstrates that the original AFDC-U program was conceived as an emergency measure of short duration to deal with widespread unemployment in a pe-

3. Appellant does not go so far as to claim such an error in drafting but he does intimate the possibility. In his brief it is suggested that Congress adopted broader language than was necessary, perhaps because of the desire of some Congressmen for a broader program than Congress "really" wanted. While this theory is convenient, it ignores the language of the statute and is without support in the history of the AFDC-U program. See discussion, *infra*, accompanying footnotes 5-11.

4. Because of the frequent confusion of the terms "father", "breadwinner" and "wage earner" in congressional deliberations concerning other AFDC programs, this suggestion may not be entirely unfounded. See, e.g., *King v. Smith*, 392 U.S. at 328 (1968). However, such a solution offers little solace to appellant, because as shown *infra* at Section III(B), it is nothing more nor less than sexual stereotyping of the sort repeatedly condemned by this Court. See *Orr v. Orr*, U.S., 47 U.S.L.W. 4224 (1979); *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

5. For views counselling caution in the use of legislative history and decrying the manufacture of history, see, e.g., *Schwegmann Brothers v. Calvert Corp.*, 341 U.S. 384, 395-397 (Concurrence of Mr. Justice Jackson) (1951); Frankfurter, *Some Reflections on Reading Statutes*, 47 COL. L. REV. 527, 543 (1947); See also HART & SACKS, *THE LEGAL PROCESS*, 1242-1286 (Tent. Ed. 1958). The approach to legislative history utilized by appellant conflicts with the precepts set forth in these sources.

riod of serious economic recession.⁶ Furthermore, this Court has characterized the original AFDC-U enactment not as a scheme to keep welfare fathers with their families, but as an effort designed to fill the gap in assistance created by the exhaustion of unemployment benefits. See *Batterton v. Francis*, 432 U.S. at 429. The preponderance of the historical evidence demonstrates that the original enactment was designed along with other measures to alleviate "the distress arising from the unsatisfactory performance of the economy."⁷

In 1962 the AFDC-U program was extended for a period of five years without relevant change. Act of July 25, 1962, 76 Stat. 193. Then in 1967, the AFDC-U program was modified by the adoption of overtly sex-conscious language. Benefits under the program would henceforth be restricted to a child who had been deprived of support by reason of the unemployment "of his father". 42 U.S.C. § 607. Appellant insists that this change was undertaken by Congress as part of the effort to "eliminate the structural incentive in the AFDC program that induced paternal desertion." (Br. 19). This suggestion is without merit. The change from sex-neutral to sex-conscious terminology in 1967 did not increase the benefits already available to fathers either directly or indirectly. Nor did it establish disincentives for paternal desertion. Its primary effect

6. The original enactment, intended to last only fifteen months, was proposed as part of an overall relief package along with a bill to extend unemployment benefits. H.R. REP. NO. 28, 87th Cong. 1st Sess. 1 (1961). See also *Statement of Secretary of Health, Education and Welfare, Abraham Ribicoff in Hearings on H.R. 4884 Before the House Comm. on Ways and Means*, 87 Cong. 1st Sess. 94-95 (1961).

7. *President's Message to Congress on Economic Growth and Recovery*, 1961 U.S. Code Cong. and Admin. News 1028. For additional evidence upon which this conclusion is based, see Amici's Brief in Support of their Motion to Dismiss or Affirm in *Califano v. Stevens*, No. 78-449, at 8-12.

was to deprive mothers of the opportunity they had previously enjoyed to qualify their families for AFDC-U assistance. Concomitantly, it established an incentive for parental desertion that had not previously existed. In those families where the "breadwinner" mother became unemployed, her intact family was rendered ineligible for AFDC-U assistance. In such a situation, the 1967 change encouraged one parent to desert so as to qualify the remaining family members for AFDC-U assistance. See *Stevens v. Califano*, 448 F. Supp. at 1322.

Given this result, some other reason must be identified as the basis for this change in the AFDC-U program.⁸ The legislative history again establishes the real reason for this revision. Congress was aware that certain states were permitting families to obtain AFDC-U benefits when one parent was employed and the other unemployed. H.R. REP. No. 544, 90th Cong. 1st Sess. 108 (1967); S. REP. No. 744, 90th Cong. 1st Sess. 160 (1967). Providing assistance to families with a working parent was unacceptable to Congress and the 1967 amendments were motivated by a Congressional desire to restrict this practice. See *Philbrook v. Glodgett*, 421 U.S. 707, 710-711, n.6 (1975). However, in enacting new limitations Congress engaged in the most transparent sort of sexual stereotyping. Fathers were assumed to be breadwinners and their unemployment was made the *sine qua non* for assistance. Mothers were assumed to be homemakers and their employment was viewed as irrelevant in determining whether a child had been deprived of support.

Appellant attempts to marshal support for his "deserting father" theory from various 1967 House and Senate

8. See *Orr v. Orr*, U.S., 47 U.S.L.W. at 4227, n.10 (1979).

Reports, as well as the comments of a number of legislators. However, absolutely none of this material indicates why or how converting a previously sex-neutral program to a sex-conscious one would serve to keep fathers at home. The Senate Report upon which appellant places reliance specifically stated that resolution of the problem of deserting fathers was a subject in need of continued congressional study rather than legislative action.⁹

Appellant also relies upon several pages of statistics and scientific report citations concerning abandoning fathers as support for this thesis. However, none of this material was presented to Congress.¹⁰ One searches the legislative history in vain for any discussion of the MOYNIHAN REPORT or its progeny. The reason these materials are not mentioned is that they were not of central concern to Congress when it acted. Appellant has indulged in the fabrication of a convenient *post hoc* rationalization with respect to the history and aims of § 407. Such a rationalization is not supported by the facts and cannot serve as a basis for interpretation of § 407.

9. "The Committee is concerned about the effect that the absence of a State program for unemployed fathers has on family stability. Where there is no such program there is an incentive for an unemployed father to desert his family in order to make them eligible for assistance. *This will be a matter of continuing study by the committee.*" S. REP. No. 744, 90th Cong. 1st Sess. 160 (1967) (emphasis added). This remark was brought to appellant's attention in Amici's Motion to Dismiss or Affirm in *Califano v. Stevens*, but appellant has scrupulously avoided making comment upon its obvious inconsistency with the arguments he makes before this Court. See Motion to Dismiss or Affirm in *Califano v. Stevens*, No. 78-449, 13, n.11.

10. The *only* statistical reference to abandonment in the whole of the legislative history is a brief reference to the fact that 19% of AFDC recipient families had been deserted by a father. None of the figures appellant laboriously details on pages 30 and 31 of his brief were presented to Congress despite their apparent availability and relevance to the kind of inquiry appellant now contends Congress was undertaking.

III. Section 407 Deprives Female Wage Earners of Rights Guaranteed Under the Constitution

A. Section 407 imposes increased burdens on women attempting to enter the workforce and deprives women workers of protection for their families which men receive as a result of their employment

Appellant would have this Court believe that § 407 does not achieve its objectives "at the needless expense of women." (Br. 36). This contention is incorrect in a number of respects. Most basically, § 407 erects a barrier which keeps women from becoming full participants in the workforce. It does this in family units in which a wife takes on the responsibilities of "providing a home and its essentials" while her spouse (because of skills, health or inclination), undertakes the necessary homemaking responsibilities. Cf. *Orr v. Orr*, U.S., 47 U.S.L.W. at 4227. If she becomes unemployed and cannot obtain unemployment compensation, her prior work efforts cannot qualify her family for AFDC-U assistance. Were this same woman to stay home and compel her husband to perform the breadwinner's function, AFDC-U coverage would be vouchsafed automatically. The lesson is clear. If there is a need in an intact family to have homemaker functions performed, it is up to the wife to perform them. The alternative choice jeopardizes the survival of the family. Section 407 not only penalizes the working wife in intact families, it coerces women in such families to avoid the workforce and to restrict their lives to the role of homemaker.

This disparity violates the rule established by this Court in *Weinberger v. Wiesenfeld*, 420 U.S. at 645 (1975), and reiterated in *Califano v. Goldfarb*, 430 U.S. at 206-

207 (1977), that women who work are entitled to receive the same protection for their families which men receive as a result of their employment. See also, *Orr v. Orr*, U.S., 47 U.S.L.W. 4224 (1979); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

Appellant contends that any burden caused by § 407 falls equally on women, men and children gathered in intact families and is, therefore, not a sex-biased burden. This argument is merely a simplistic restatement of the facts confronting this Court: some needy families receive benefits while others do not. It is the legitimacy for distinguishing between the two classes of needy families which forms the basis for the challenge to § 407.

In analogous situations this Court has invalidated sex-conscious statutes which made it more difficult for a woman's family than a man's family to receive assistance or benefits. In *Frontiero v. Richardson*, 411 U.S. 677 (1973), the plaintiff was denied certain medical benefits and an increased housing allowance because of a proof-of-dependency rule imposed only on female members of the "uniformed forces." The Court overturned this discriminatory program although its impact was felt equally by both plaintiff and her husband. A similar result was reached in *Jablon v. Secretary of Health, Education and Welfare*, 399 F. Supp. 118 (D. Md. 1975), *aff'd* 430 U.S. 924 (1977). In light of these holdings the argument that equality of injury justifies a sex-biased rule should be rejected.

B. Section 407 is invalid because it is premised upon and perpetuates sexual stereotypes

The § 407 classification is ineluctably sex-based and sex-biased. It conveys a familiar message: the breadwinner who counts is male. The message is delivered in

its most extreme form. A female, despite her demonstrated breadwinner capacity, is not even counted second. She is not counted at all. If this is not sex-role stereotyping, nothing is.

As appellant's analysis demonstrates, § 407 differentiates between two classes of identically situated former breadwinners: the father who stays with his spouse and children because of "conscience and love" (Br. 14, 17), and the mother who remains with her family for the very same reasons. The man's exemplary conduct attracts a monetary benefit for the family, the woman's does not. The sole justification for rewarding father's love while taking mother's for granted is the allegedly "solid statistical evidence" (Br. 23) that most women will voluntarily stay at home while, absent a financial incentive, men will not. On the basis of this empirical evidence, the sex-based generalization is applied. Fathers, because of their sex, qualify their families for benefits whether or not payment is needed to induce the socially desired conduct. Mothers, because of their sex, disqualify their families.

Decisions of this Court establish, as appellant admits, that "no law may be based on sexual stereotypes." (Br. 26). As appellant would now have it, stereotype would mean "unsupported belief," an assumption not supported by "solid statistical evidence." (Br. 33). But this Court has rejected this definition.

For example, while it can be documented that men are generally more active than women in business affairs, a sex-based classification premised upon such evidence is invalid. See *Reed v. Reed*, 404 U.S. 71 (1971). Further, it can be shown that most married women are dependent while most married men are not. Yet a number of sex-based classifications premised on this notion have been voided. See *Orr v. Orr*, U.S., 47 U.S.L.W. 4224

(1979); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Califano v. Goldfarb*, 430 U.S. 199 (1977).

The insidious practice this Court has consistently condemned is the lawmaker's habit of basing statutory schemes on loose-fitting characterizations and outdated misconceptions concerning the role of females in the home rather than in the marketplace and world of ideas. *Orr v. Orr*, U.S., 47 U.S.L.W. 4224 (1979); *Craig v. Boren*, 429 U.S. 190 (1976); *Stanton v. Stanton*, 421 U.S. 7 (1975). Patterning official policy on "the way most men [or women] are" shores up the stereotype and casts the weight of government against the man or woman who would break the sex-typed mold. As this Court recently stated, where "the [government's] compensatory and ameliorative purposes are as well served by a gender-neutral classification as one that gender-classifies and therefore carries with it the baggage of sexual stereotypes, the [government] cannot be permitted to classify on the basis of sex." *Orr v. Orr*, U.S., 47 U.S.L.W. at 4228.

What is apparent is that appellant misconstrues the meaning of sex stereotyping. It is not myths and false impressions which are rejected by this analysis but rather a standardized mental picture which presents an oversimplified image of the roles and abilities of males and females.

To adopt the test that appellant now seems to espouse would be to undercut the long line of sex-based classification cases previously decided by this Court. As established in *Reed v. Reed*, 404 U.S. at 76 (1971), sex-based classifications "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike". As restated in *Craig v. Boren*, 429 U.S. at 197 (1976), this test requires that "classifications by gender must serve

important governmental objectives and must be substantially related to the achievement of those objectives." Appellant would have this Court permit the government to fabricate any sort of *post hoc* theory in defense of challenged sex-based classifications so long as the theory could be supported by some statistical proof. This is not the approach employed by this Court. It foregoes thorough analysis of the actual objectives of the legislation and does not require a determination as to whether the statute actually achieves its objectives. In the present case, appellant's analysis neither honestly identifies the government objectives of the AFDC-U program, nor explains how the sex of the unemployed parent furthers the objective he fabricates. The concoction of a theory and some statistical proof is not enough to save a sex-based classification under the tests of *Reed*, *Craig* and *Orr*. Such a test, if adopted, would signal a return, albeit *sub silentio*, to the "any rational basis" standard no longer applicable in cases of gender discrimination. See *Craig v. Boren*, 429 U.S. at 210-211, n.* (1976) (Powell, J. concurring).

C. The invidious sexual discrimination worked by § 407 cannot be defended on the ground that the section is part of a social insurance program

Perhaps at the core of appellant's contentions¹¹ is the argument that the sexual discrimination worked by § 407 is permissible because it facilitates the administration of a social insurance program. This argument is ob-

11. It is hard to say with certainty what appellant's basic contention is. It may be that the sexual discrimination worked by § 407 is acceptable because it is incorporated in the Social Security Act (Br. 39-40). Or, it may be that "no law may be based on sexual stereotypes." (Br. 26). Or, it may be that the evil to be condemned in sex discrimination cases arises when a

(Continued on following page)

viously premised upon this Court's holding in *Mathews v. Lucas*, 427 U.S. 495 (1976) and on Mr. Justice Rehnquist's comments in his dissenting opinion in *Califano v. Goldfarb*, 430 U.S. at 225. There are, however, a number of problems with this theory. First, it must be noted that such a theory has never been accepted by this Court in any case involving sex-based classifications. Quite the contrary, as the plurality opinion in *Goldfarb* indicates, there is no reason for giving "special deference" to classifications established in social insurance programs like the Social Security Act. *Califano v. Goldfarb*, 430 U.S. at 204, n.4. This teaching simply reiterates the principle established in *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975), that classifications established in the Social Security Act are open to the same level of scrutiny as matters not part of that legislative scheme. Certainly no general rule requiring approval of sex-based classifications in social insurance schemes can be found in *Goldfarb* or *Wiesenfeld*,

Further, § 407 is distinguishable from legislation at issue in cases like *Mathews v. Lucas*, 427 U.S. 495 (1976). In *Lucas* the challenged section did not operate to exclude absolutely any class of recipients from assistance. Its thrust was to require illegitimates to prove their dependency in order to qualify for benefits. In the present case there is plainly and simply no way that a family with a female breadwinner can qualify for AFDC-U. This absolute exclusion works a harm precisely like that condemned in *Wiesenfeld*, where the plaintiff was absolutely

Footnote continued—

"gender based distinction produce[s] an unequal division of benefits between men and women that [does] not serve any substantial government interest." (Br. 37). Or it may be any one of half a dozen other variants invented by appellant to avoid confronting this Court's standard applicable in cases challenging sex bias in the Social Security Act. *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Califano v. Goldfarb*, 430 U.S. 199 (1977).

excluded from participating in the benefit scheme in question. See *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); see also *Califano v. Goldfarb*, 430 U.S. at 299 (Rehnquist, J., dissenting). Where a classification absolutely deprives citizens of benefits upon which they rely for support, this Court has on several occasions indicated its intention to focus carefully on the legislative choice made and to reject those choices which are not justified by important governmental objectives.¹² No basis for the adoption of a contrary standard is articulated by appellant in the present case.

The reason usually given to justify classifications like that upheld in *Lucas* and that championed by the dissent in *Goldfarb* is that important considerations of administrative convenience are served by the rule established. See, e.g., *Mathews v. Lucas*, 427 U.S. at 509 (1976). In the present case appellant can advance no such argument because there is no administrative advantage to the sex barrier erected by § 407. No hard issues concerning proof of claim are avoided by the rule and no logically secure discrimination between *bona fide* recipients and the undeserving is facilitated. The only end served is the exclusion of a number of admittedly needy claimants from public assistance simply on the basis of the sex of the working parent. The number of such needy individuals is not so great,¹³ and the need is not so difficult to assess, as to justify a rule of complete exclusion.

12. See *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *U. S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973); Davidson, *Welfare Cases and the "New Majority": Constitutional Theory and Practice*, 10 HARV. CIV. RIGHTS—CIV. LIB. REV. 513, 541-545 (1975); see also *San Antonio Indep. School District v. Rodriguez*, 411 U.S. 1, 37 (1973); L. Tribe, *Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services*, 90 HARV. L. REV. 1065 (1977).

13. Only 147 of the 48,000 individuals who received AFDC benefits in Ohio from April 1978, through January 1979, received
(Continued on following page)

CONCLUSION

The judgment of the United States District Court for the District of Massachusetts should be affirmed.

Respectfully submitted,

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Footnote continued—

these benefits as a result of the order in *Stevens v. Califano*, 448 F. Supp. 1313 (N.D. Ohio 1978). Ohio Department of Public Welfare, FY 1980-1981, Biennial Budget Requests, House Subcommittee Hearings, Answers to Legislative Budget Office's Questions Relative to Public Assistance Accounts, February 21, 1979, Question 1, p. II/9.

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